

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CHRISTINE BASIRICO,  
Guardian and Conservator for  
KYLE MOFFITT,

Plaintiffs,

vs.

Case No. 05-CV-74691  
HON. GEORGE CARAM STEEH

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendant.

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ORDER DENYING WITHOUT PREJUDICE DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT (#5) AND  
GRANTING PLAINTIFFS' MOTION FOR LEAVE  
TO FILE AN AMENDED COMPLAINT (#4) ON OR BEFORE MAY 22, 2006

For the reasons stated on the record at an April 20, 2006 hearing, defendant State Farm's motion for summary judgment, construed as a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), is hereby DENIED, without prejudice. Plaintiffs' motion for leave to file a First Amended Complaint is hereby GRANTED to the extent plaintiffs are granted leave to file an additional claim under the Michigan Consumer Protection Act, M.C.L. § 445.901 et seq., to file amended silent fraud and fraud/misrepresentation claims consistent with the particularity requirements of Federal Rule of Civil Procedure 9(b), to clarify that plaintiffs are alleging a breach of contract claim and not a separate common law breach of an implied covenant of good faith and fair dealing claim, and to otherwise clarify the factual basis for plaintiffs' claims. See Fed. R. Civ. P. 8(a). Plaintiffs shall file their First

Amended Complaint on or before May 22, 2006. Defendant may thereafter file a renewed motion to dismiss under Rule 12(b)(6)<sup>1</sup>.

SO ORDERED.

s/George Caram Steeh  
GEORGE CARAM STEEH  
UNITED STATES DISTRICT JUDGE

Dated: April 25, 2006

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record on April 25, 2006, by electronic and/or ordinary mail.

s/Josephine Chaffee  
Secretary/Deputy Clerk

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<sup>1</sup> Dismissal is warranted under Federal Rule 12(b)(6) when it appears beyond doubt that the plaintiff can prove no set of facts which would entitle the plaintiff to the claimed relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957)